

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

IN RE:) CHAPTER 13
)
MARTIN ANTONIO TORRES-TICAS) CASE NO. 19-35608-KLP
(aka *Martin Torres, aka Martin T Ticas*))
and ZULMA LISSETH GONZALEZ,)
DEBTORS.) JUDGE KEITH L. PHILLIPS

WILMINGTON SAVINGS FUND)
SOCIETY, FSB, AS OWNER TRUSTEE)
OF THE RESIDENTIAL CREDIT)
OPPORTUNITIES TRUST V-D)
V.)
)
MARTIN ANTONIO TORRES-TICAS)
and ZULMA LISSETH GONZALEZ)
6749 MANUEL STREET)
NORTH CHESTERFIELD, VA 23234)
DEBTORS,)
)
JOSE E. TICAS)
6749 Manuel Street)
Richmond, VA 23234,)
CO-DEBTOR,)
)
SUZANNE E. WADE)
TRUSTEE)
702 GLENN FOREST DRIVE)
STE. 202)
RICHMOND, VA 23226)
RESPONDENTS.)

MOTION FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C § 362(a) AND THE CO-DEBTOR STAY PURSUANT TO 11 U.S.C. § 1301(a)

COMES NOW Wilmington Savings Fund Society, FSB, As Owner Trustee Of The
Residential Credit Opportunities Trust V-D ("Movant"), a secured creditor in the above-

captioned case and, by and through counsel, and moves this Court to terminate the Automatic Stay and Co-Debtor Stay as to the real property located at 6749 Manuel Street, Richmond, VA 23234 (“Property”), and, as grounds therefore, states as follows:

1. This proceeding seeking relief under 11 U.S.C. § 362 and 11 U.S.C. § 1301 is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On October 23, 2019, Debtors filed a petition with the Bankruptcy Court for the Eastern District of Virginia under Chapter 13 of Title 11 of the United States Bankruptcy Code.

COUNT 1
RELIEF FROM AUTOMATIC STAY

3 On or about June 19, 2008, Debtor, Zulma L. Gonzalez, and Co-Debtor, Jose E. Ticas, executed and delivered to Weststar Mortgage Inc. a Note in the amount of One Hundred Sixty-Three Thousand Seven Hundred Six Dollars (\$163,706.00), plus interest at the rate of 7.250% per annum to be paid over thirty (30) years. A copy of the Note dated about June 19, 2008 is attached as **Exhibit A** and incorporated herein.

4 To secure the repayment of the sums due under the Note, Debtor, Zulma L. Gonzalez, and Co-Debtor, Jose E. Ticas, executed and delivered to Weststar Mortgage Inc., a Deed of Trust dated about June 19, 2008, encumbering the Property, more fully described as:

LEGAL DESCRIPTION

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND WITH IMPROVEMENTS THEREON AND APPURTENANCES THERETO BELONGING, LYING AND BEING IN CHESTERFIELD COUNTY, VIRGINIA, COMMONLY KNOWN AS 6749 MANUEL STREET, AND DESIGNATED AS LOT 16, BLOCK E, SECTION NINE, KING'S FOREST, ON SUBDIVISION PLAT BY CHARLES C. TOWNES & ASSOCIATES, P.C., DATED OCTOBER 24, 1984, RECORDED MARCH 14, 1985, IN THE CLERK'S OFFICE CIRCUIT

COURT, CHESTERFIELD COUNTY, VIRGINIA, IN PLAT BOOK 48, PAGE 89, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE PARTICULAR DESCRIPTION.

A copy of the Deed of Trust is attached as Exhibit B and incorporated herein.

5. The Note and Deed of Trust were later transferred to Movant and Movant is the current holder of the Note and Deed of Trust.

6. Upon information and belief, the approximate payoff, exclusive of legal fees and expenses incurred in the connection with the instant motion, due and owing to the Movant as of February 3, 2020 is \$189,584.00, with interest accruing at the daily rate of \$23.83.

7. The value of the Property is approximately \$143,000.00 pursuant to Debtors' Schedule A/B.

8. The Debtors' Plan, as initially proposed on October 23, 2019, provided that the Debtors make ongoing monthly mortgage payments to Movant. Debtor's failure to abide by the terms of the proposed Plan is cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1).

9. Debtors are in breach of the terms of the Note and Deed of Trust by failing to make the regular contract payments to Movant as and when they come due, from November 1, 2019 to February 1, 2020. Debtors are due four (4) payments of \$845.88 each. Debtors are in post-petition default for November 1, 2019 for a total amount due of \$3,383.52.

10. The Debtors have not and cannot offer Movant adequate protection of its interest in the Property, and Movant avers it is not adequately protected.

11. Debtors' failure to pay Movant's obligation as and when due violates the terms of, and is a default under, the proposed Plan.

12. Debtor's account delinquency as well as Debtors' failure to maintain regular contract payments to Movant as required by the proposed Plan, constitute cause for relief from the automatic stay.

13. Movant has incurred reasonable attorney's fees and costs in connection with prosecution of this motion.

14. Relief from stay is appropriate under § 362(d)(2) of the Bankruptcy Code to permit Movant to exercise its non-bankruptcy rights and remedies with respect to the Deed of Trust.

COUNT II
RELIEF FROM CO-DEBTOR STAY

15. The allegations of paragraphs 1 through 14 are incorporated by reference herein.

16. Jose E. Ticas is a Co-debtor under the provisions of 11 U.S.C. § 1301(c) and is protected by the Co-Debtor stay.

17. Wilmington Savings Fund Society, FSB, As Owner Trustee Of The Residential Credit Opportunities Trust V-D will be irreparably harmed by the continuation of the Co-Debtor Automatic Stay.

18. As described hereinabove, cause exists to terminate the Co-Debtor Stay.

WHEREFORE, Wilmington Savings Fund Society, FSB, As Owner Trustee Of The Residential Credit Opportunities Trust V-D prays that this Court issue an order terminating or modifying the Automatic Stay under 11 U.S.C. § 362 and Co-Debtor Automatic Stay under 11 U.S.C. § 1301, as to the property located at 6749 Manuel Street, Richmond, VA 23234 and granting the following:

a. Relief from the Automatic and Co-Debtor stays allowing Movant to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and/or allowing Movant, through its agents, servicers and representatives to contact Debtor and/or Debtor(s)'s counsel for the purpose of engaging in

discussions and consideration for possible loss mitigation options, solutions and/or resolutions with regard to the underlying deed of trust and note, including, but not limited to loan modification, deed in lieu or other loss mitigation alternatives.

b. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

c. Award Movant its reasonable attorneys' fees and expenses associated with this Motion,k and the Trustee is hereby authorized to modify the plan as necessary to accommodate this claim;

d. For such other relief as the Court deems proper.

This the 27th day of February, 2020.

McMichael Taylor Gray, LLC
/s/ Keith Yacko
Keith Yacko
Virginia Bar No. 37854
Attorney for Movant
3550 Engineering Dr.
Suite 260
Peachtree Corners, GA. 30092
470-289-4347
kyacko@mtglaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via Regular U.S. Mail and/or Electronic Mail (CM/ECF) to the parties listed on the attached service list, on February 27, 2020.

SERVICE LIST

VIA U.S. MAIL

Martin Antonio Torres-Ticas
6749 Manuel Street
North Chesterfield, VA 23234

Zulma Lisseth Gonzalez
6749 Manuel Street
North Chesterfield, VA 23234

Martin Antonio Torres-Ticas
6749 Manuel Street
Richmond, VA 23234

Zulma Lisseth Gonzalez
6749 Manuel Street
Richmond, VA 23234

Jose E. Ticas
6749 Manuel Street
Richmond, VA 23234

VIA CM/ECF

James E. Kane
Kane & Papa, PC
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Trustees

Suzanne E. Wade
702 Glenn Forest Drive
Ste. 202
Richmond, VA 23226

U.S. Trustee

John P. Fitzgerald, III
Office of the U.S. Trustee - Region 4-R
701 E. Broad Street, Ste. 4304
Richmond, VA 23219

This the 27th day of February, 2020.

McMichael Taylor Gray, LLC

/s/ Keith Yacko

Keith Yacko
Virginia Bar No. 37854
Attorney for Movant
3550 Engineering Dr.
Suite 260
Peachtree Corners, GA. 30092
470-289-4347
kyacko@mtglaw.com